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50

January 20th, 1959

COCOM Document No. 2869.77

COORDINATING COMMITTEE

4259507

RECORD OF DISCUSSION

S. General

ONTHE REVISION OF THE STRATEGIC EXPORT CONTROLS - EXCEPTIONS PROCEDURES

January 12th, 1959

Present: Denmark, France, Germany, Italy, Japan, Netherlands, Norway, United Kingdom, United States.

References: COCOM 471(Rov.), 799, 1473, 2869.5, 2869.13, 2869.55, 2869.62 and 2869.75.

1. The CHAIRMAN reminded the Committee of the three proposals which had been submitted by the Belgian, United Kingdom and United States Delegations concerning the General Principles underlying the exceptions procedure contained in COCOM Document 471(Rovised). He invited delegates to resume discussion on this point.

2. The UNITED STATES Delegate stated that he and his Belgian and United Kingdom colleagues had drafted a joint text incorporating elements of all three proposals. He noted that one of the main problems had been to reconcile the terms of the United Kingdom proposal, to the effect that exports should be authorised upon the judgement of the exporting country, taking full account of the Committee's views, with those of the United States proposal which required unanimous agreement in the Committee. Since, however, this problem was not raised in the text of the present 471 procedure, and since their task was merely to revise that procedure, they had agreed to make no mention of it and had just referred to "full consideration in the Committee". The Delegate stated that the United States Government were prepared to accept this joint text. He was further instructed to state that his authorities accepted, in a spirit of compromise, the insertion of the word "social" after "economic and political" as suggested by the Italian Delegation, although believing that "social" was encompassed in "economic and political", and interpreting "social" to mean labour unrest so serious as to threaten the political or economic stability of the country or area concerned. The Delegate then submitted the joint Belgian, United Kingdom, United States text reading as follows:

"Subject to the special considerations laid down in the Committee's Principles and Procedures, exceptions to the general rule of embargo in respect of List I items will be made, after full consideration by the Committee, only when refusal to permit the export is deemed to involve a risk of damage to the economic, political or social well-being of the exporting country, of a nature so serious as to override the security considerations involved."

3. The UNITED KINGDOM Delegate thanked his United States colleague for his help in producing the above text, to which he was able to agree. Referring to the problem mentioned by the United States Delegate, he wished, however, to have it placed on record that, in the view of the United Kingdom Delegation, the decision as to whether or not an export was to be made rested, as in the past, exclusively with the exporting country. As to the question of adding the word "social", his authorities could agree, although they had no strong desire to have it included in the text.

~~CONFIDENTIAL~~

CONFIDENTIAL

4. The CHAIRMAN stated that the Belgian Delegate had requested him to inform the Committee that his authorities were able to accept the text recorded in paragraph 2 above.
5. The ITALIAN Delegate expressed his appreciation to the United States Delegate and undertook to transmit the proposed text to his authorities. He found the wording "only when refusal to permit the export is deemed to involve a risk of damage to the economic, political or social well-being of the exporting country ..." to be far-reaching and somewhat vague. In this connexion, he referred to the problem of purely local, limited difficulties which were liable to arise from a refusal to grant a requested licence; this case could hardly be regarded as constituting a risk of damage to the well being of the whole country. Speaking personally the Delegate preferred the wording proposed by the United Kingdom Delegation, but was unable to give final views there and then. He associated himself with the statement made by the United Kingdom Delegate as to the responsibility of the exporting country in the final issue.
6. The DANISH Delegate stated that he had been instructed to support the United Kingdom proposal. He could, however, agree ad referendum to the joint text before the Committee. He noted that the main difference between the text now proposed and that contained in the present COCOM Document 471 (Revised) resided in the fact that the latter referred solely to factors which could be judged by the individual Government concerned, whereas the former in specifying "... of a nature so serious as to override the security considerations involved" introduced factors of which the Committee was the competent judge. Thus it was even less clear where the final responsibility rested, and the Danish Government would, if the new wording were adopted, wish to associate themselves with the statement of understanding made by the United Kingdom Delegation in paragraph 3 above.
7. The JAPANESE Delegate stated that, in supporting the United Kingdom proposal, his Delegation had also hoped that it would prove possible to reconcile the positions held by the United Kingdom and United States Delegations. They were therefore glad to see the compromise text, to which they could agree ad referendum. Turning to the remarks made by the United Kingdom Delegate as to his Delegation's interpretation of the proposed text, the Delegate noted that, as this had always been the Japanese Delegation's understanding in the past, he merely wished to confirm it at the present time.
8. The FRENCH Delegate thanked his United States, Belgian and United Kingdom colleagues for the text just submitted to the Committee. He was unable to give views at the present meeting and undertook to submit the proposal to his authorities. In the meantime, he found the words "... of a nature so serious as to override the security considerations involved" to be very severe. As to the interpretation given by the United Kingdom Delegate, he wished to transmit the comments made in this connexion to his authorities.
9. The UNITED STATES Delegate, in commenting on the United Kingdom Delegate's statement of understanding, said that he would not try to deny the sovereign right of any country to make its own final decision. It had become clear that all that could be done in drawing up the exceptions procedure was to state the factors upon which the Committee should base its study of individual cases submitted by the sovereign Member Countries. He noted, however, that unanimity had been fundamental to the Committee's operations. He warned that breaches of unanimity could seriously endanger the proper functioning of the Committee's controls, and would expect any breaches of unanimity to be exceptional indeed. Turning to the Italian Delegate's remark concerning the problem of damage to the well-being of an individual area rather than of a whole country, he stated that much would depend upon the gravity of the damage and believed that the Committee would be ready to consider such cases in terms of the tests of the proposed procedure. Finally, the Delegate replied to his French colleague's comment

CONFIDENTIAL

CONFIDENTIAL

- 3 -

COCOM Document No. 2869.77

by explaining that the text before the Committee took account of the fact that there were very important security considerations involved in the export to the Sino-Soviet Bloc of any of the goods appearing in the short list of embargoed items. The factors invoked to allow for such exports must be of a very serious nature indeed.

10. The GERMAN Delegate thanked the Belgian, United Kingdom and United States Delegations for their compromise proposal, upon which he was still awaiting final instructions. He noted that if this text were adopted, it would make the granting of exceptions extremely difficult. While he agreed that this should be so, he nevertheless felt that, if the 471 procedure were to become more rigid, the Committee should envisage a more flexible interpretation of the de minimis procedure contained in COCOM Document No. 1473. The German Delegation had already stressed the need to allow the application of the minimum shipments procedure to borderline cases having slight strategic importance and a value in the region of \$25,000 to \$30,000. The Delegate was not suggesting an upper limit for the Minimum Shipments Procedure, but was merely asking that every case be considered on its merits and not dismissed because of its value or quantity only. Furthermore, he would make it quite clear that prior consultation would apply to such cases. Turning to the statement of understanding made by the United Kingdom Delegate, he agreed that the final decision would lie, as in the past, with the exporting Government. He felt sure, however, that the views and, in particular, the objections expressed in the Committee would be taken into full consideration. He referred to paragraphs 97 and 98 of COCOM Document No. 2869.62 and felt confident that, as in the past, there would be practically no departure from the unwritten rule of unanimity.

11. The NETHERLANDS Delegate stated that he had no instructions on the proposal just submitted. His authorities were not strongly in favour of the addition of the word "social", but would agree to it if such was the unanimous wish of the Committee.

12. The FRENCH Delegate agreed with his German colleague as to the need for greater flexibility in considering de minimis cases, especially in view of the fact that the text before the Committee would make the 471 procedure extremely difficult. He felt that, in order not to limit the Minimum Shipments Procedure solely to cases of minimal monetary value, a term such as "modium" might be added to "minimum".

13. The CHAIRMAN noted that the joint text submitted by the Belgian, United Kingdom and United States Delegations for the General Principles underlying the COCOM 471 procedure had been accepted ad referendum by the Danish and Japanese Delegations, and that all other delegations had undertaken to submit it to their Governments. He further noted that the replies of some delegations were linked up with the question of the Minimum Shipments Procedure. He then invited the Committee to take up this latter point, and recalled that in addition to the German and French suggestions (paragraphs 10 and 12 above), there was also a proposal from the United States Delegation which appeared in Annex D to COCOM 2869.5, Section III 2.

14. The UNITED STATES Delegate explained that his Delegation's proposal mentioned "quantity" rather than "value" and stressed the fact that exceptions should be "of no consequence from the security point of view." He felt that this proposal might well meet the main objections raised by the German Delegate, and asked delegates to study it and suggest any drafting changes they deemed necessary.

15. The JAPANESE Delegate stated that in the past his Delegation had always understood the de minimis procedure to refer to both small monetary value and minor strategic importance. This had been the original idea of the United Kingdom Delegation in proposing such a procedure (COCOM 799).

CONFIDENTIAL

CONFIDENTIAL

- 4 -

COCOM Document No. 2869.77

It was true that, in the days of the special China controls, this procedure as well as many other procedures had been interpreted more loosely in the case of items on the so-called "China Differential". The Delegate believed, however, that in normal past practice both the monetary and strategic factors had been taken into consideration, and therefore considered the German suggestion to constitute an entirely new proposal.

16. The ITALIAN Delegate stated that, in his view, the German suggestion interpreted a feeling already often expressed by a number of Delegations in the Committee. He himself could agree with this interpretation and believed that no exception request should be rejected solely on account of its monetary value.

17. The UNITED STATES Delegate, referring to the French Delegate's suggestion to include the concept of "medium-value" shipments, stated that his authorities would probably view such an idea with scepticism. He was unable to give any precise indication of the value envisaged by his Government in their proposal, but felt sure that they would be ready to consider any case that Member Governments believed to fall under its terms. In reply to a question from the Japanese Delegate, the Delegate stated that subject to confirmation by his authorities, he understood the United States proposal to mean that no case would be rejected offhand on the basis of monetary value alone. He pointed out, however, that the Minimum Shipments Procedure had always been regarded as an escape valve to avoid criticism of the control system, by providing for the approval of negligible shipments, and noted that the United Kingdom paper had considered it satisfactory enough so that it need not be basically changed. It had always been considered necessary that bigger shipments be justified by important considerations, in the past quid pro quo, which the Committee was now considering replacing by broader factors. If exceptional extenuating circumstances justified shipments for which the exceptions procedures were not suitable, delegations were free to submit ad hoc cases.

18. The DANISH Delegate stated that he was unable to understand the philosophy behind the German suggestion, especially in consideration of the very radical revision of the lists which had just taken place. To his mind, once provision had been made for important exception cases on the one hand, and minor ones on the other, there was no possible justification for intermediate cases. He had already submitted the German proposal to his authorities, who were not in favour of changing the procedure as proposed by the German Delegation as they feared it would create administrative difficulties and weaken the whole control system.

19. The FRENCH Delegate stated that he, like his German colleague, was seeking to work out a procedure that would allow "medium" shipments which could not be regarded as endangering the security of the Free World. He felt sure that such cases did exist, and merely wanted to be able to present them on their individual merits, without any risk of rejection for purely procedural reasons.

20. After some discussion, during which the GERMAN Delegate referred his colleagues to his statement in paragraph 8(a)(ii) of COCOM Document No. 2869.62, the CHAIRMAN recommended further study on the basis of the United States proposal which, since it made no mention of monetary value, might well meet the objections raised by the French, German and certain other delegations in this respect, and thus be instrumental in reaching a satisfactory solution.

21. It was agreed to resume discussion on Monday, the 19th January.

CONFIDENTIAL